Siti Juliana Suen bte Abdullah & Ors v Sungei Wang Properties Sdn Bhd & Ors

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO Q–02–115 OF 2004
MOKHTAR SIDIN, RICHARD MALANJUM AND NIK HASHIM JJCA
15 JUNE 2005

Civil Procedure — Jurisdiction — Forum conveniens — Cause of action arose in Kuala Lumpur — Contract made in Sarawak — Whether High Court in Malaya or High Court in Sabah and Sarawak proper forum to hear — Courts of Judicature Act 1964 s 23

Civil Procedure — Jurisdiction — Forum conveniens — Liberty to file afresh

The first and second appellants were the co-administratrix and co-administrators of the estate of the late Mohd Nor bin Md Diah, deceased. The third appellant was a private limited company having its registered address in Sibu, Sarawak whilst the fourth appellant was a merchant having an address in Kuala Lumpur. The first and second respondents were private limited companies with registered and business addresses in Kuala Lumpur. The third respondent was the Chief Executive Officer of the first and second respondents. The parties entered into a sale and purchase agreement wherein the appellants agreed to sell all the appellants' issued and allotted shares in the second respondent to the first respondent. The appellants commenced an action against all the respondents for breach of the contract and claimed for monies due and payable under the agreement and specific performance of the agreement and damages. The appellants had entered a judgment in default of appearance against the respondents pursuant to O 13 r 1(1) of the Rules of High Court 1980. Subsequently, the respondents filed an ex parte application for leave for conditional appearance after which they filed their memorandum of conditional appearance and the summons in chambers (encl 19) to set aside the writ of summons and the judgment in default. The High Court judge allowed the respondents' application in encl 19 for setting aside the appellants' writ of summons and the judgment in default of appearance with costs and ordered that the appellants' writ of summons and statement of claim be struck out for want of jurisdiction being forum non conveniens. The High Court judge ruled that 'it is the High Court in Malaya and not the High Court in Sabah and Sarawak which has the jurisdiction to adjudicate the instant case on its merit'. Hence, this appeal.

Held, allowing the part of the appeal:

(1) The High Court judge was correct in holding that the High Court in Malaya and not the High Court in Sabah and Sarawak had the jurisdiction to adjudicate or to hear the present case on its merit. It was not seriously in dispute that the sale and purchase agreement which formed the

subject matter of this action occurred or arose in Kuala Lumpur. And all the payments by the respondents to the appellants were made in West Malaysia and none was made or carried out in Sibu, Sarawak. Further, all the respondents reside or have their registered addresses in West Malaysia. Thus, by virtue of s 23(1)(a), (b) and (c) of the Courts of Judicature Act 1964, the High Court in Malaya had the jurisdiction to hear the instant suit as the cause of action arose in Kuala Lumpur and that all the respondents had their places of businesses in Kuala Lumpur, which was within the local jurisdiction of the High Court in Malaya (see para 7).

(2) As regards forum conveniens, the High Court in Malaya at Kuala Lumpur would appear to be the proper or convenient forum to determine the dispute between the two parties. The forum which had the more real and substantial connection with the present case in terms of subject matter, the facts giving rise to this action which occurred in West Malaysia, and the relevant witnesses and/or documents pertaining to this action reside or situate in West Malaysia, would be the High Court at Kuala Lumpur rather than the High Court at Sibu (see para 8).

(3) However, the striking out order by the High Court judge given without the liberty to file afresh in the appropriate court based on the ground of forum non conveniens would be unjust in the circumstances as the appellants would obviously be deprived from pursuing their claims against the respondents (see para 9).

[**Bahasa Malaysia summary**

Perayu pertama dan kedua adalah pentadbir bersama bagi hartanah arwah Mohd Nor bin Md Diah, si mati. Perayu ketiga adalah sebuah syarikat sendirian berhad yang beralamat berdaftar di Sibu, Sarawak sementara perayu keempat adalah peniaga yang beralamat di Kuala Lumpur. Responden pertama dan kedua adalah syarikat-syarikat sendirian berhad yang beralamat berdaftar dan perniagaan di Kuala Lumpur. Responden ketiga adalah Ketua Pegawai Eksekutif kepada responden pertama dan kedua. Pihak-pihak tersebut telah memasuki satu perjanjian jual beli di mana perayu-perayu bersetuju untuk menjual semua saham yang dikeluarkan dan diagihkan perayu dalam responden kedua kepada responden pertama. Perayu telah memulakan satu tindakan terhadap kesemua responden kerana kemungkiran kontrak dan menuntut wang terhutang dan perlu dibayar di bawah perjanjian tersebut dan pelaksanaan spesifik perjanjian tersebut dan gantirugi. Perayu telah memasukkan penghakiman ingkar kehadiran terhadap responden menurut A 13 k 1(1) Kaedah-Kaedah Mahkamah Tinggi 1980. Kemudiannya responden telah memfailkan satu permohonan ex-parte bagi kebenaran untuk kehadiran bersyarat yang mana kemudiannya mereka memfailkan memorandum kehadiran bersyarat dan saman dalam kamar (lampiran 19) untuk mengetepikan writ saman dan

penghakiman ingkar. Hakim Mahkamah Tinggi telah membenarkan permohonan responden dalam lampiran 19 untuk mengetepikan writ saman dan penghakiman ingkar perayu dengan kos dan juga writ saman dan penyata tuntutan perayu dibatalkan kerana tiada bidang kuasa dan merupakan forum non conveniens. Hakim Mahkamah Tinggi memutuskan bahawa ia adalah Mahkamah Tinggi Malaya dan bukan Mahkamah Tinggi Sabah dan Sarawak yang mempunyai bidang kuasa untuk mendengar kes ini atas merit. Oleh itu, rayuan ini dibuat.

Diputuskan, membenarkan rayuan tersebut:

(1) Hakim Mahkamah Tinggi adalah betul dalam memutuskan bahawa Mahkamah Tinggi Malaya dan bukannya Mahkamah Tinggi Sabah dan Sarawak yang mempunyai bidang kuasa untuk menghakimi atau mendengar kes ini dengan meritnya. Tiada pertikaian serius bahawa perjanjian jual beli tersebut yang merupakan perkara subjek dalam tindakan ini berlaku atau timbul di Kuala Lumpur. Dan semua bayaran oleh responden kepada perayu dibuat di Malaysia Barat dan tiada yang dibuat di Sibu, Sarawak. Tambahan pula, semua responden bermastautin atau mempunyai alamat berdaftar di Malaysia Barat. Oleh itu, menurut s 23(1)(a), (b) dan (c) Akta Mahkamah Kehakiman 1964, Mahkamah Tinggi Malaya mempunyai bidang kuasa untuk mendengar tindakan ini kerana kausa tindakan timbul di Kuala Lumpur dan semua responden mempunyai tempat perniagaan di Kuala Lumpur, yang mana adalah dalam bidang kuasa tempatan Mahkamah Tinggi Malaya (lihat perenggan 7).

(2) Berkenaan dengan forum conveniens, Mahkamah Tinggi Malaya di Kuala Lumpur adalah merupakan forum yang patut atau sesuai untuk memutuskan pertikaian di antara kedua pihak. Forum yang mempunyai kaitan yang sebenar atau sebetulnya dengan kes ini dari segi perkara subjek, fakta-fakta yang menimbulkan tindakan ini yang berlaku di Malaysia Barat, adalah Mahkamah Tinggi di Kuala Lumpur dan bukannya Mahkamah Tinggi di Sibu (lihat perenggan 8).

(3) Walau bagaimanapun, perintah membatalkan yang diberikan oleh hakim Mahkamah Tinggi tanpa kebebasan untuk memfailkan tindakan yang baru dalam mahkamah yang betul berdasarkan alasan forum non conveniens adalah tidak adil dalam keadaan ini kerana perayu sememangnya akan dihalang meneruskan tuntutan mereka terhadap responden (lihat perenggan 9).]

Notes

For cases on forum conveniens, see 2(2) *Mallal's Digest* (4th Ed, 2004 Reissue) paras 574–584.

Case referred to

RHB Bank Bhd v Kawood Sdn Bhd & Ors [2001] MLJU 690 (refd)

Legislation referred to

Rules of High Court 1980 O 13 r 1(1)

Appeal from: Suit No 22–48 of 2002 (High Court, Sibu)

Tai Choi Yu (Tai Choi Yu & Co) for the appellants.
George Lim (Wee Wui Kiat with him) (Batternberg & Talma) for the respondents.

Nik Hashim JCA:

[1] Briefly the facts of the case are that the first and second appellants are the co-administratrix and co-administrators of the estate of the late Mohd Nor bin Md Diah, deceased. The third appellant is a private limited company having its registered address in Sibu, Sarawak whilst the fourth appellant is a merchant having an address in Kuala Lumpur. The first and second respondents are private limited companies with registered and business addresses in Kuala Lumpur. The third respondent is the Chief Executive Officer of the first and second respondents. In the court below, the appellants were the plaintiffs whereas the respondents were the defendants.

[2] The parties entered into a sale and purchase agreement dated 1 July 1996 wherein the appellants agreed to sell all the appellants' issued and allotted shares in the second respondent to the first respondent. The appellants commenced an action against all the respondents for breach of the contract and claimed RM6,730,700 for monies due and payable under the agreement and specific performance of the agreement and damages.

[3] The appellants had entered a judgment in default of appearance against the respondents pursuant to O 13 r 1(1) of the Rules of High Court 1980 on 4 December 2002.

[4] On 29 March 2003, the respondents filed an ex parte application for leave for conditional appearance which was granted on 31 March 2003. The respondents then filed their memorandum of conditional appearance and the summons in chambers (encl 19) to set aside the writ of summons and the judgment in default on 1 April 2003 and 2 April 2003 respectively.

[5] The learned judge allowed the respondents' application in encl 19 for setting aside the appellants' writ of summons and the judgment in default of appearance with costs and that the appellants' writ of summons and the statement of claim be struck out for want of jurisdiction being forum non conveniens. The learned judge ruled that 'it is the High Court in Malaya and not the High Court in Sabah and Sarawak which has the jurisdiction to adjudicate the instant case on its merit'. Hence, this appeal.

[6] On 23 November 2004, we allowed the appeal in part, ie that the order given by the High Court on the striking out is upheld but the appellants are

given the liberty to file afresh in the High Court of Malaya. We also made an order that the respondents be granted half of costs in this appeal and the appellants' deposit of RM500 be in account of the said costs.

[7] In our judgment, the learned judge was correct in holding that the High Court in Malaya and not the High Court in Sabah and Sarawak which has the jurisdiction to adjudicate or to hear the present case on its merit. Itwas not seriously in dispute that the sale and purchase agreement which forms the subject matter of this action occurred or arose in Kuala Lumpur. And all the payments by the respondents to the appellants were made in West Malaysia and none was made or carried out in Sibu, Sarawak. Further, all the respondents reside or have their registered addresses in West Malaysia. Thus, by virtue of s 23(1)(a), (b) and (c) of the Courts of Judicature Act 1964, the High Court in Malaya has the jurisdiction to hear the instant suit as the cause of action arose in Kuala Lumpur and that all the respondents have their places of businesses in Kuala Lumpur, which is within the local jurisdiction of the High Court in Malaya.

[8] As regards forum conveniens, we agree with the learned judge that the High Court in Malaya at Kuala Lumpur would appear to be the proper or convenient forum to determine the dispute between the two parties. The forum which has the more real and substantial connection with the present case in terms of subject matter, the facts giving rise to this action which occurred in West Malaysia, and the relevant witnesses and/or documents pertaining to this action reside or situate in West Malaysia, would be the High Court at Kuala Lumpur rather than the High Court at Sibu (see *RHB Bank Berhad v Kawood Sdn Bhd & Ors* [2001] MLJU 690).

[9] However, on the facts of this case, we are of the view that the striking out order by the learned judge given without the liberty to file afresh in the appropriate court based on the ground of forum non conveniens, would be unjust in the circumstances as by the said order, the appellants would obviously be deprived from pursuing their claims against the respondents. Hence, we made the orders accordingly.

Appeal partially allowed.

Reported by D Nesh